

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CENTRAL FLYWAY AIR, INC., a
Canadian corporation, and JON
BOYCHUK, an individual,

Plaintiffs,

v.

GREY GHOST INTERNATIONAL, LLC,
a Wyoming corporation with operations in
part in Washington state, and CASEY
INGELS, an individual,

Defendants,

GREY GHOST INTERNATIONAL,
LLC, and GREY GHOST GEAR OF
CANADA,

Counter-Plaintiffs,

v.

CENTRAL FLYWAY AIR, INC., JON
BOYCHUK, and MILBURN
MOUNTAIN DEFENSE LTD.,

Counter-Defendants.

CASE NO. 20-5506 RJB

ORDER ON MOTION TO STRIKE
AND MOTIONS TO COMPEL

1 This matter comes before the Court on Defendant and Counter-Plaintiff Grey Ghost
2 International, LLC's ("GGI") Motion to Strike Plaintiff's Expert Report and Preclude Expert
3 Witness (Dkt. 68) and GGI's Motion to Compel Discovery from Counter-Defendant, Milburn
4 Mountain Defense, Ltd. and to Compel Plaintiff and Counter-Defendant Jon Boychuk to Provide
5 Complete Responses (Dkt. 70). The Court has considered the pleadings filed regarding the
6 motions and the file herein.

7 **FACTS**

8 Originally filed on May 29, 2020, this case arises as a result of failed business venture
9 Grey Ghost Gear of Canada, Ltd. Dkt. 1. The Second Amended Complaint was filed on
10 February 26, 2021. Dkt. 43. Defendant Casey Ingels was dismissed with prejudice on June 28,
11 2021. Dkt. 55.

12 The expert witness disclosure deadline was September 8, 2021. Dkt. 38. The discovery
13 deadline is November 8, 2021. *Id.* The dispositive motions deadline is December 7, 2021 and
14 trial is set to begin on March 7, 2021. Dkt. 38.

15 **Fact and Motions Related to Expert Witness John Brams.** On September 8, 2021,
16 Plaintiffs/Counter-Defendants filed a Motion to Continue the expert disclosure deadline for 60
17 days "to present a supplemental report." Dkt. 62. In this same pleading, the Plaintiffs/Counter-
18 Defendants designated John Brams, CPA as their expert. *Id.* The Plaintiffs/Counter-Defendants'
19 motion was granted, in part, and denied, in part. Dkt. 66. That order granted a two-week
20 extension of time, to October 4, 2021, to provide the expert's report. Dkt. 66.

21 On October 4, 2021, a three-page "Expert Report of John Brams, CPA" was filed. Dkt.
22 67. He does not state an opinion in the report, but details more data he asserts he needs to assess
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1 the value of the Plaintiffs' interests in Grey Ghost Gear of Canada, Ltd. (the failed business) and
2 to analyze the veracity of Defendant GGI's allegations. *Id.*

3 On October 14, 2021, GGI filed the instant motion to strike Mr. Brams' report and to
4 preclude his testimony at trial. Dkt. 68. It argues the report fails to provide the information
5 required under Fed. R. Civ. P. 26(a)(2)(B). *Id.* GGI notes that despite having over 2,000 pages
6 of discovery from GGI, Mr. Brams argues that he does not have all the information he needs to
7 render any opinions. *Id.* GGI argues that the information is in Plaintiff/Counter-Defendant
8 Boychuk's possession and notes that GGI's expert witness on these issues was able to provide an
9 opinion. *Id.* Further, GGI points out that, contrary to the assertions in his report and CV, Mr.
10 Brams' CPA license was suspended in 2016 by the Oregon Board of Accountancy and remains
11 suspended. *Id.*

12 The Plaintiffs/Counter-Defendants do not directly respond to the motion to strike Mr.
13 Brams' report or to limit or to preclude his testimony at trial.

14 On October 18, 2021, the last day to file discovery related motions, the
15 Plaintiffs/Counter-Defendants filed a Motion to Compel Discovery. Dkt. 72. (While this motion
16 is not ripe for consideration for two more days, for context, it will be discussed here). In this
17 motion, they seek to compel more complete answers to their Requests for Production and
18 Interrogatories to Defendant GGI, which GGI sent to them on June 7, 2021. Dkt. 72.
19 Specifically, they seek more on Requests for Production 17, 18, 19, 20, and 21, which the
20 Plaintiffs/Counter-Defendants contend are necessary for Mr. Brams to complete his report on
21 valuation of their shares in the failed business. *Id.*

22 In response to the Plaintiffs/Counter-Defendants' motion to compel, the GGI argues that
23 the Plaintiffs/Counter-Defendants failed to meet the meet and confer requirements of Fed. R.

1 Civ. P. 37(a)(1) and of Local Rule W.D. Wash. 37(a)(1). Dkt. 75. GGI further argues that it has
2 no other documents responsive to the Plaintiffs/Counter-Defendants requests for production,
3 particularly Requests for Production 17, 18, 19, 20, and 21. *Id.*

4 **Facts and Motion related to GGI's Motion to Compel.** GGI moves to compel
5 discovery from Counter-Defendant Milburn Mountain Defense, Ltd. ("Milburn") and from
6 Plaintiff Jon Boychuk. Dkt. 70. The following are facts that relate to this motion.

7 **Milburn Discovery.** On July 26, 2021, GGI served a First Set of Interrogatories,
8 Request for Production and Request for Admissions on Milburn. Dkt. 71-1. Milburn's
9 responses were due by August 25, 2021. Milburn did not respond.

10 **Boychuk Discovery.** On April 1, 2021, GGI served its First Set of Interrogatories,
11 Requests for Production, and Request for Admissions on Mr. Boychuk. Dkt. 57. Responses
12 were due by May 3, 2021. After attempting to obtain responses, on June 30, 2021, GGI wrote
13 Mr. Boychuk's counsel advising them that due to the failure to respond, all objections to the First
14 Set of Interrogatories and Requests for Production Defendants were deemed waived and the
15 Request for Admissions were deemed admitted under Fed. R. Civ. P. 36(a). *Id.* Almost one
16 month later, on July 23, 2021, Mr. Boychuk served responses to the First Set of Interrogatories,
17 Requests for Production, and Request for Admissions. Dkt. 57, at 29-51. Mr. Boychuk denied
18 or failed to respond to some of the Requests for Admissions. Dkt. 57, at 47-51.

19 On August 30, 2021, the Court denied GGI's motion to deem all requests for admission
20 admitted and Mr. Boychuk's motion for the Court to permit his July 23, 3031 responses to
21 remain was granted. Dkt. 60.

22 **GGI's Motion to Compel.** In the pending motion, GGI moves the Court for an order
23 compelling Milburn to respond to the First Set of Interrogatories, Request for Production and
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1 Request for Admissions. Dkt. 70. GGI moves the Court for an order compelling Plaintiff Jon
 2 Boychuk to respond to GGI's Request for Admission #20, to which he did not respond. GGI
 3 further notes that Mr. Boychuk's response were not under oath as required under Fed. R. Civ. P.
 4 33(b)(3). *Id.*

5 Plaintiffs/Counter-Defendants respond and argue that GGI failed to meet the meet and
 6 confer requirements of Fed. R. Civ. P. 37(a)(1) and of Local Rule W.D. Wash. 37(a)(1). Dkt. 73.
 7 GGI filed a reply, acknowledges that its meet and confer communication was solely through
 8 email. Dkt. 74. It further notes that the discovery remains outstanding. *Id.*

9 **DISCUSSION**

10 **A. MOTION TO STRIKE MR. BRAM'S REPORT**

11 Fed. R. Civ. P. 26(a)(2)(A) requires disclosure of an expert witness. Rule 26(a)(2)(B)
 12 provides that "this this disclosure must be accompanied by a written report--prepared and signed
 13 by the witness--if the witness is one retained or specially employed to provide expert testimony
 14 in the case." The report must contain:

15 (i) a complete statement of all opinions the witness will express and the basis and
 16 reasons for them;

17 (ii) the facts or data considered by the witness in forming them;

18 (iii) any exhibits that will be used to summarize or support them;

19 (iv) the witness's qualifications, including a list of all publications authored in the
 previous 10 years;

20 (v) a list of all other cases in which, during the previous 4 years, the witness
 testified as an expert at trial or by deposition; and

21 (vi) a statement of the compensation to be paid for the study and testimony in the
 22 case.

1 Rule 26(a)(2)(B). Rule 37(c)(1) provides that “where a party fails to provide information or
2 identify a witness as required by Rule 26(a) . . . that party is not allowed to use that information
3 or witness to supply evidence on a motion, at a hearing or at a trial, unless the failure was
4 substantially justified or is harmless.”

5 GGI’s motion to strike Mr. Brams’ report (Dkt. 68) should be granted. Mr. Brams’ report
6 fails to comply with Rule 26(a)(2)(B). Further, the Plaintiffs/Counter-Defendants did not
7 respond to the motion. They made no showing that the “failure was substantially justified or is
8 harmless.” To the extent GGI moves to preclude Mr. Brams expert opinions from trial, the
9 motion should be granted.

10 **B. MOTIONS TO COMPEL**

11 Fed. R. Civ. P. 37(a)(1) provides that a motion to compel must include a “certification
12 that the movant has in good faith conferred or attempted to confer with the person or party
13 failing to make disclosure or discovery in an effort to obtain it without court action.” Likewise,
14 Local Rule W.D. Wash. 37(a)(1) provides:

15 Any motion for an order compelling disclosure or discovery must include a
16 certification, in the motion or in a declaration or affidavit, that the movant has in
17 good faith conferred or attempted to confer with the person or party failing to
18 make disclosure or discovery in an effort to resolve the dispute without court
19 action. The certification must list the date, manner, and participants to the
20 conference. If the movant fails to include such a certification, the court may deny
21 the motion without addressing the merits of the dispute. A good faith effort to
22 confer with a party or person not making a disclosure or discovery requires a face-
23 to-face meeting or a telephone conference.

24 In GGI’s Motion to Compel (Dkt. 70) and in Plaintiffs/Counter-Defendants’ Motion to
Compel (Dkt. 72), both parties indicate that they emailed opposing counsel about the discovery
at issue in their motions. Accordingly, neither party met the Local Rule 37(a)(1) requirement to
either meet in person or over the telephone.

Both motions (Dkts. 70 and 72) should be renoted for consideration for November 19, 2021. By November 17, 2021, parties should file additional briefing (after complying with Local Rule 37(a)(1)) informing the Court, what, if any, issues remain in the motions to compel. Parties are strongly encouraged to resolve these issues if possible.

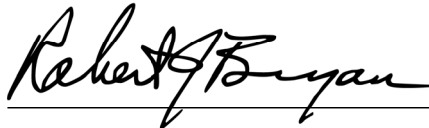
ORDER

IT ORDERED THAT:

- GGI's Motion to Strike Plaintiff's Expert Report and Preclude Expert Witness (Dkt. 68) **IS GRANTED**;
- GGI's Motion to Compel Discovery from Counter-Defendant, Milburn Mountain Defense, Ltd. and to Compel Plaintiff/Counter-Defendant Jon Boychuk to Provide Complete Responses (Dkt. 70) and Plaintiffs/Counter-Defendants' Motion to Compel Discovery (Dkt. 72) **ARE RENOTED to November 19, 2021**; and
- By **November 17, 2021**, parties **SHALL FILE** additional briefing (after complying with Local Rule 37(a)(1)) informing the Court, what, if any, issues remain in the motions to compel.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 3rd day of November, 2021.



ROBERT J. BRYAN
United States District Judge